

Before the
COPYRIGHT ROYALTY JUDGES
Washington, D.C.



In the Matter of)

)
Distribution of the 2004, 2005, 2006,)
2007, 2008, and 2009 Cable Royalty)
Funds)
_____)

) Docket No. 2012-6 CRB CD 2004-2009
(Phase II)

**REPLY OF THE JOINT SPORTS CLAIMANTS IN SUPPORT OF MOTION
TO AMEND ORDER REQUIRING MORE SPECIFIC STATEMENT**

Joint Sports Claimants (“JSC”) hereby reply to Independent Producers Group’s (“IPG”) Opposition to JSC’s Motion to Amend Order Requiring More Specific Statement (“Order”). IPG offers no convincing reason why the Judges should not amend the Order to require the participating parties to identify the specific Phase I category (or categories) for which each represented claimant seeks a share of the royalties in any particular year. Like the other information that the Order requires to be provided, the information sought by JSC’s Motion would assist the parties and Judges to efficiently and expeditiously resolve the issues in dispute. With the exception of claimant David Powell and IPG, all other parties to this proceeding have identified the claimant categories in which they assert an interest in this proceeding. JSC asks that the Judges amend their Order to require IPG and David Powell to provide the same information about the claimants they supposedly represent.

1. IPG’s claim that the Judges have previously rejected JSC’s request is wrong. In the last Phase II proceeding, JSC asked the Judges to compel IPG to identify the “*programming* for which IPG claims a share of royalties in the Phase I Sports category.” *Order Denying Motion to Compel Identification of IPG-Represented Programs*, Docket No. 2008-2 CRB CD

2000-2003 (Phase II) 1 (Aug. 17, 2011) (emphasis added). Given IPG's subsequent failure in the same proceeding to show that it represented a party with a claim in the Sports category, the Judges have ample reason for granting such a request in this case, and there is no question but that 17 U.S.C. § 801(c) provides the Judges with the authority to issue such procedural rulings. *Order on Motion by JSC for Section 801(c) Ruling or, in the Alternative, a Paper Proceeding in the Phase I Sports Category*, Docket No. 2008-2 CRB CD 2000-03 (Phase II) 3 (May 17, 2013). In any event, that issue is *not* presently before the Judges. The issue that is now before the Judges is whether IPG and Mr. Powell should be required to identify the Phase I categories to which their claimants are asserting royalty claims, not the specific programming allegedly within those claims.

The Copyright Office previously required IPG to identify the claimants it purportedly represented in the Sports category. *Order*, Docket Nos. 2001-8 CARP CD 98-99 et al., 3 (Feb. 8, 2006). That is all that JSC seeks at this time. The argument for disclosure is even stronger here than it was when the Copyright Office initially addressed the matter. At that time, the Copyright Office was simply transferring responsibility to the newly established Copyright Royalty Board for various matters and no proceeding had yet been commenced for those matters. Here, by contrast, the Judges have commenced a proceeding and the information sought by JSC relates directly to that proceeding.

2. IPG has not shown that the amended order requested by JSC would burden IPG in any meaningful way. IPG filed a petition to participate in which it represented that it had claims in the Sports category. IPG has known about its claims for many years, so IPG cannot reasonably maintain that it lacks awareness of the categories in which particular claimants will assert claims. Moreover, the Judges have now ruled that the categories are limited to the

category definitions agreed to by the Phase I Parties, including the following definition of the Sports category: "Live telecasts of professional and college team sports broadcast by U.S. and Canadian television stations, except for programs coming within the Canadian Claimants category." Stipulation Between Phase I Representatives of the JSC and Canadian Claimants Category, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) (Sept. 24, 2012); *see also Order on Motion by JSC for Section 801(c) Ruling or, in the Alternative, a Paper Proceeding in the Phase I Sports Category*, at 2. IPG should have little trouble determining the mutually exclusive program categories for which its claimants seek a share of the royalties allocated in Phase I.

3. JSC and the other parties should not be required to speculate about the extent of IPG's claims, if any, in a particular category. In the last proceeding, properly identifying and categorizing IPG's claims took seven years of proceedings, including numerous motions and pleadings, direct cases, discovery, hearings, and proposed findings. Those proceedings ultimately established that IPG represents no claimants with programming in the Phase I Sports category. *See Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims*, Docket No. 2008-2 CRB CD 2000-2003 (Phase II) 14 & n.15 (Mar. 21, 2013); *see also Order on Motion by JSC for Section 801(c) Ruling or, in the Alternative, a Paper Proceeding in the Phase I Sports Category*, at 3. JSC should not be required to expend significant resources yet again litigating issues that the Judges have already resolved. At a minimum, IPG should be required to identify which, if any, of its claimants have a claim in the Phase I Sports category so that JSC are not required to endlessly engage in negotiation and litigation with IPG once again.

4. In keeping with the Judges' scheduling order, *Notice of Participants Commencement of Voluntary Negotiation Period, and Case Scheduling Order*, Docket No. 2012-6 CRB CD 2004-2009 (Phase II) (Sept. 23, 2013), the Phase II parties are expected to engage in

good faith settlement negotiations from September 26, 2013 to December 26, 2013, *id.* at Ex. A. As noted, in the 2000-03 Phase II proceeding, the Judges ruled that IPG represents no claimants in the Phase I Sports category. IPG's petition to participate contains a materially identical set of claimants as in that proceeding, including the United States Olympic Committee, which the Judges held does not have any claims falling within the Sports category, and Fédération Internationale de Football Association (FIFA), which the Judges clearly held that IPG may not represent at all.¹ Unless IPG identifies other claimants that it has the authority to represent and that have claims in the Phase I Sports category, JSC cannot engage in meaningful settlement discussions.² Although IPG quotes at length from a prior opposition filed by the Motion Picture Association of America ("MPAA") to a request that is not presently before the Judges, MPAA made clear in filing its more specific statement that

MPAA-represented Program Suppliers support the October 7, 2013 motion of the [JSC] to have each Phase II Participant identify, on a royalty-year-by-royalty-year basis, the Phase I program category for each copyright owner for which they are asserting a claim (or claims) in this proceeding. Absent such identification, it is impossible for the parties to engage in meaningful negotiations within each program category during the voluntary negotiation period.

More Specific Statement of the MPAA-Represented Program Suppliers, Docket No. 2012-6 CRB CD 2004-09 (Phase II) 2 n.3 (Oct. 15, 2013).

¹ As the Judges are well aware from the last Phase II proceeding, FIFA expressly disavowed IPG's authority to represent FIFA in that proceeding "or any other." Email from M. Dale to R. Galaz (July 30, 2012, 12:16 PM) (Ex. 201 to JSC Proposed Findings of Fact and Conclusions of Law -- Motions to Dismiss IPG Claims, Docket No. 2008-2 CRB CD 2000-2003 (Phase II)); *see also Memorandum Opinion and Order Following Preliminary Hearing on Validity of Claims*, at 12.

² IPG contends that JSC is wrongfully refusing to disclose information regarding the dollar value of the Sports category as support for its claim that JSC's arguments are somehow pretextual. JSC, however, has indicated that it will disclose such information if IPG can establish that it has a valid sports claim. IPG has cited no authority for the proposition that it is entitled to such information at this stage of the proceeding, and given IPG's failure in the last proceeding to establish that it represents a claimant in the Sports category, JSC has ample reason to question IPG's purported need for that information. In any event, JSC will respond to IPG's motion when and if it is filed.

CONCLUSION

For the reasons stated above, JSC respectfully request that the Judges grant JSC's Motion to Amend Order Requiring More Specific Statement.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert Alan Garrett", is written over a horizontal line.

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October 21, 2013

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I hereby certify that on this 21st day of October, 2013, a copy of the foregoing motion was sent by Federal Express standard overnight mail or priority overnight mail to the parties listed below:

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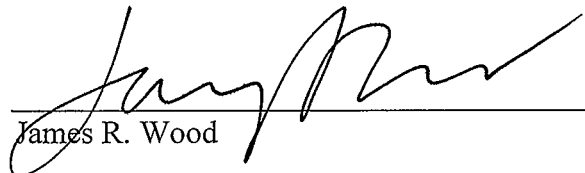
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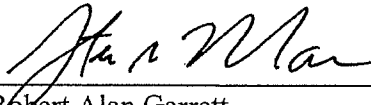
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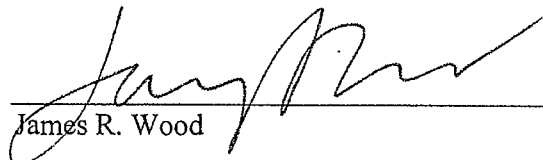
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